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Court of Appeals
Division II
State of Washington
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NO. 50239-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

TEAGAN DOVER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable David L. Edwards, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The juvenile court abused its discretion in disregarding RCW 13.40.200(3) to allow the penalties for two community supervision violations committed prior to a hearing be aggregated to exceed 30 days of confinement.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the juvenile court abused its discretion in disregarding RCW 13.40.200(3) to allow the penalties for two community supervision violations committed prior to a hearing be aggregated to exceed 30 days of confinement?

C. STATEMENT OF THE CASE

Twelve-year-old Teagan Ann Dover pleaded guilty to a single count of assault in the fourth degree. CP 1, 3-9. The court's disposition order included 12 months of community supervision with multiple conditions to include that Teagan abide by a curfew and refrain from using illegal drugs. CP 14-15.

On March 16, 2017, Teagan was taken into custody on a March 10 motion alleging she violated the terms of her community supervision by violating curfew on March 8. RP 6; Supp. DCP, Motion and Declaration to Revoke/Modify Community Supervision, PV-#2. The same day, she

provided a UA sample at the request of probation officer Kisa Foley. RP 5-6.

The UA results, positive for THC, were reported on March 21. RP 4-5; Supp. DCP, Hearing Exhibit 1.

At a March 30 hearing, Teagan admitted violating curfew as per the March 10 Motion and Declaration to Revoke/Modify Community Custody. Supp. DCP, Motion and Declaration to Revoke/Modify Community Supervision, PV-#2. The court imposed 30 days in detention. Supp. DCP, March 30, 2017, Order on Violation of Community Supervision and Modification of Disposition Order.

Probation Officer Foley waited until March 31, the day after Teagan's hearing on the curfew violation, to file another violation on Teagan, this time for the positive UA collected on March 16 and reported on March 21. CP 20; Supp DCP, Exhibit 1; RP 6. Ms. Foley was aware of the positive UA results at the March 30 community supervision violation hearing. RP 6.

On April 20, the court heard the community supervision violation hearing on the positive UA. RP 1-9. Teagan did not deny the UA results. RP 7. Instead, she argued the court could not impose any additional detention on the violation as the court, on March 30, had already

imposed the aggregate maximum 30 days of detention for the curfew violation and all other violations occurring prior to the March 30 hearing, i.e., the positive UA. See RCW 13.40.200(3).

The court disregarded Teagan's argument and imposed 15 additional days of detention which kept Teagan in custody until the expiration of her term of community supervision. RP 8; CP 22-24.

Teagan filed a timely notice of appeal challenging the court's disregard of RCW 13.40.200(3). CP 25.

D. ARGUMENT

The juvenile court abused its discretion when it disregarded statutory authority and aggregated two community supervision violations to impose a sentence in excess of the 30 day maximum sentence for all violations occurring prior to a hearing.

Teagan Dover received an aggregated 45 day sentence in violation of the statute prohibiting aggregated sentencings exceeding 30 days when multiple community supervision violations occur prior to the hearing.

This court will reverse a sentencing court's decision when a court clearly abuses its discretion or misapplies the law. *State v. Porter*, 133 Wn.2d 177, 181, 942 P.2d 974 (1997). A trial court abuses its discretion if its decision is "manifestly unreasonable," based on "untenable grounds," or made for "untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d

12, 26, 482 P.2d 775 (1971). This standard is violated when a trial court makes or bases its ruling on an erroneous view of the law. *State v. Williams*, 181 Wn.2d 795, 798, 336 P.3d 1152 (2014) (trial court abused its discretion when it disregarded a sentencing statute).

Here, the juvenile court judge abused his discretion when he failed to follow a governing statute mandating that regardless of the number of individual violations, an aggregate sentence for all violations cannot exceed 30 days total.

Per RCW 13.40.200(3),

If the court finds that a respondent has willfully violated the terms of an order ... it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement.

The statute's language is unambiguous. The trial court abused its discretion by failing to abide by the plain language.

Per the statute, multiple violations of community supervision occurring before a hearing date cannot be aggregated to exceed 30 total days of confinement. In this instance, Probation Officer Foley filed a report alleging Teagan violated curfew on March 9, 2017. The probation violation report was filed on March 10 and Teagan admitted the violation at a March 30 hearing. In the meantime, on March 21, Teagan's UA

provided on March 16 was reported positive for THC. Probation Officer Foley knew of the second violation but waited to file it until March 31, the day after the court imposed 30 days on the curfew violation. RP 6. Over her objection, Teagan subsequently received an additional, non-aggregated 15 days of confinement for the positive UA. RP 7; CP 22-24.

The trial court's error in failing to aggregate – and not exceed 30 days of confinement – on Teagan's curfew violation and positive UA violation is supported by this court's holding in *State v. Barker*, 114 Wn. App. 504, 58 P.3d 908 (2002). There a probation officer filed two separate violation motions on the same date, each on a separate piece of paper, for violations of a single disposition order. Barker admitted both violations. Over his objection, and correct citation to RCW 13.40.200(3), the court imposed 30 days per violation and aggregated them leaving Barker to serve 60 days in detention. Barker appealed. This Court relied on the plain language of RCW 13.40.200(3) to limit the court to a sentence not exceeding 30 total aggregate days.

Barker was subject to a single disposition order. He could be sentenced for any and all violations of such order that occurred prior to the hearing on September 4, 2001 – provided that the aggregate punishment did not exceed 30 days. The juvenile court imposed 60 days, and it erred by so doing.

Id. at 707.

Here, Teagan's cases differs from *Barker* as to the timing of the two violations' filings but the result should not be any different. Teagan's March 16 positive UA occurred prior to the March 30 curfew violation hearing. As both violations occurred prior to the March 30 hearing, the court was limited to a maximum 30 aggregate days of detention on the two violations (March 8 and 16) regardless of the filing date of the second violation. RCW 13.40.200(3). Teagan's aggregate 45 days in detention was error.

E. CONCLUSION

On remand, Teagan's court file documents should be amended to reflect the 15 day sentence was imposed in error.

Respectfully submitted December 5, 2017.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

LISA E. TABBUT/WSBA 21344
Attorney for Teagan Dover

CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I filed the Brief of Appellant to (1) Grays Harbor County Prosecutor's Office, at appeals@co.grays-harbor.wa.us; (2) the Court of Appeals, Division II; and (3) I am retaining Teagan's copy until I next have contact with her.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed December 5, 2017, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal stroke extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Teagan Dover, Appellant

LAW OFFICE OF LISA E TABBUT

December 05, 2017 - 10:46 AM

Transmittal Information

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